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PATENT APPLICATION

ATTORNEY DOCKET NO. TRMB-T9630

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Rodic C. FAN, et al.**

Confirmation No.: 9442

Application No.: 09/707,326

Examiner: SHARMA, SUJATHA R.

Filing Date: 11/06/2000

Group Art Unit: 2618

Title: Location Authentication Stamp Attached to Messages

Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
INDICATED IN NOTICE OF ALLOWANCE
(37 C.F.R. 1.705)

NOTE: 37 C.F.R. 1.704 (e): "Submission of an application for patent term adjustment under 1.705(b) (with or without request under Sec. 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section."

1. This request for reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on 3/24/2009

☒ The issue fee is being paid as set forth in the papers attached hereto.

2. Applicant submits herewith a "Statement of the Correct Patent Term Adjustment: Basis(es) Under 1.702 For the Adjustment-Part B." (37 C.F.R. 1.705(b)(2)(i) and (iii)).

3. Any patent granted on this application (37 C.F.R. 1.705(b)(2)(iii)):

☒ is not subject to a terminal disclaimer.

☐ is subject to a terminal disclaimer, and the expiration date specified in the terminal disclaimer is _____

4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 1.704 (37 C.F.R. 1.705(b)(2)(iv)):

☐ there were none (37 C.F.R. 1.705(b)(2)(iv)(B)). ☒ there were as follows (37 C.F.R. 1.705(b)(2)(iv)(A)):

- 3/29/2004, Applicant delay of 65 days in filing response;
- 12/28/2004, RCE filed with Applicant delay of 80 days;
- 8/10/2005, Applicant delay of 87 days in filing response;
- 4/07/2006, Applicant delay of 76 days in filing response;
- 9/12/2006, RCE filed;
- 9/18/2007, Applicant delay of 259 days in filing response (following petition to revive).

5. Also attached hereto is a "Request for Reinstatement For Full and/or Part of the Period Adjustment Reduced Pursuant to 1.704(b)-Part C." (37 C.F.R. 1.705(c)).

6. The fee set forth in 1.18(e) (\$200.00), required by 37 C.F.R. 1.705(b)(1), is paid as follows:

Please charge Deposit Account 50-4157 \$ 200.00 . At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 50-4157 pursuant to 37 CFR 1.25.

☐ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, Alexandria, VA 22313-1450
Date of Deposit:

OR

☒ I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300 or via electronic submission.
Date of facsimile/transmission: May 11, 2009
Typed Name: Brenda Dinapoli
Signature: Brenda Dinapoli/

Respectfully submitted,

Rodic C. FAN, et al.

By /John P. Wagner, Jr./

JOHN P. WAGNER, JR.

Attorney/Agent for Applicant(s)

Reg No. : 35,398

Date : May 11, 2009

Telephone : 408-377-0500

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**STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT:
BASIS(ES) UNDER 1.702 FOR THE ADJUSTMENT
(37 C.F.R. 1.705(b)(2)(i) and (ii))**

1. This statement is being submitted in support of the "Request for Reconsideration of Patent Term Adjustment Indicated in Notice of Allowance" to which this statement is attached.

37 C.F.R. 1.705(b)(2)(i)

2. The patent term adjustment shown on the Notice of Allowance is: 520 days

It is respectfully suggested that the correct patent term adjustment under 1.702 is: 793 days

37 C.F.R. 1.705(b)(2)(ii)

NOTE: Under 1.705(b)(2)(ii) applicant must set forth: "The relevant dates as specified in 1.703(a) through(e) for which an adjustment is sought and the adjustment as specified in 1.703(f) to which the patent is entitled."

3. The basis(es) on which the applicant seeks adjustment are as follows:
The adjustment is sought for the following date: between 6/30/2004 and 10/24/2005
Adjustment to be made for this date: 273 days = (363d - app. delay of 145d)

First Action was received 656 days after the 14-mo. date. The 3-yr. rule to allowance was violated by 363 (from 11/06/2003 to 12/28/2004) that did not overlap with the 14-mo. violation of 656 days. Subtraction of app. delays of 65 and 80 days reduces the 3-yr. delay from 363 days to 273 days. Per Wyeth v. Dudas (580 F. Supp. 2d 138; 88 U.S.P.Q.2D (BNA) 1538, September 30, 2008), USPTO's view that any administrative delay under 35 U.S.C.S. § 154(b)(1)(A) overlapped any three-year maximum pendency delay under § 154 (b)(1)(B) could not be squared with language of § 154(b)(1)(B), as "B delay" began when PTO had failed to issue patent within three years, not before.

Plus additional page(s)

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